

COBLENTZ, PATCH, DUFFY & BASS, LLP  
ONE FERRY BUILDING, SUITE 200, SAN FRANCISCO, CA 94111-4213  
(415) 391-4800 • FAX (415) 989-1663

1 MICHAEL W. BOLECHOWSKI (State Bar # 118725)  
2 MARK C. RASKOFF (State Bar # 72330)  
3 DAVID L. HART (State Bar # 219517)  
BISHOP, BARRY, HOWE, HANEY & RYDER  
2000 Powell Street, Suite 1425  
Emeryville, California 94608  
4 Telephone: 510-596-0888  
Facsimile: 510-596-0899  
5  
6 Attorneys for all Defendants except  
PRASAD LAKIREDDY

7 JONATHAN R. BASS (State Bar # 075779)  
NAOMI RUSTOMJEE (State Bar # 142088)  
8 KAREN L. JENNINGS (State Bar #197046)  
GAIL G. QUAN (State Bar # 203705)  
9 COBLENTZ, PATCH, DUFFY & BASS, LLP  
One Ferry Building, Suite 200  
10 San Francisco, California 94111  
Telephone: (415) 391-4800  
11 Facsimile: (415) 989-1663

12 PAUL DELANO WOLF (State Bar # 078624)  
ERIK G. BABCOCK (State Bar #1722517)  
WOLF & BABCOCK LLP  
1212 Broadway, Tenth Floor  
14 Oakland, California 94612-3423  
(510) 451-4600

15 Attorneys for Defendant  
16 PRASAD LAKIREDDY

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA

19 JANE DOE I, et al.,

Case No. C 02-5570-WHA

20 Plaintiffs,

DEFENDANTS' NOTICE OF MOTION  
AND MOTION FOR LEAVE TO FILE  
AMENDED ANSWERS

21 vs.

22 LAKIREDDY BALI REDDY, et al.,

23 Defendants.

Date: April 8, 2004  
Time: 8:00 a.m.  
Courtroom: 9  
Before: Honorable William H. Alsup

## **NOTICE OF MOTION**

**TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

**NOTICE IS HEREBY GIVEN** that on April 8, 2004 at 8:00 a.m., or as soon thereafter as counsel may be heard in the above entitled Court, located at 450 Golden Gate Avenue, San Francisco, California, Courtroom 9, defendants Lakireddy Bali Reddy, Vijay Kumar Lakireddy, Jayaprakash Reddy Lakireddy, Venkateswara Reddy Lakireddy, Pasand Madras Cuisine, Pasand, Inc., Lakireddy Investment Co., L.B. Reddy Estate Co., Jay Construction, Active Tech Solutions, Vani Computer Solutions, Lakireddy Bali Reddy d/b/a Reddy Realty Co. will and hereby do move the Court for leave to file their First Amended Answers to the Second Amended Complaint. This motion is made on the grounds that information that has only recently come to defendants' attention indicates the need for the assertion of a new affirmative defense.

This Motion is made pursuant to Rule 15 of the Federal Rules of Civil Procedure and is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Declaration of Jonathan R. Bass ("Bass Decl."), and such other matters as may be presented to the Court.

## **STATEMENT OF ISSUES**

1. Whether Defendants should be granted leave to amend their Answers to assert the following affirmative defense: The claims of plaintiff Jane Doe II are barred, in whole or in part, by the pending action in the Superior Court of California, County of Alameda, Case No. 833453-6, filed on November 27, 2000 (the "State Court Action"). The State Court Action asserts claims for the same relief being sought in this action, and to allow both actions to proceed would permit a double recovery in violation of, among other things, defendants' rights to due process of law.

1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                   **INTRODUCTION**

3                   Defendants request leave to file Amended Answers to the Second Amended Complaint in  
4                   order to plead a previously unknown (and therefore unasserted) affirmative defense. As the Court  
5                   is aware, Lakshmi and Jarmani Prattipati, who appear in this action as plaintiffs asserting claims  
6                   that belonged to their deceased daughter, are simultaneously pursuing a state court action for  
7                   wrongful death. While some of the defendants in this action are also defendants in the state court  
8                   lawsuit, the Prattipatis could pursue both suits, without running afoul of the rules against  
9                   "splitting" their cause of action, because the wrongful death claim "belongs" to them, while the  
10                  claims in this case "belong" to their deceased daughter.

11                  The happenstance of the Prattipatis pursuing two lawsuits at the time has been the subject  
12                  of inquiry by the Court. The Court was assured that, for the reason described above, it did not  
13                  present a problem. What plaintiffs failed to tell the Court – and we were unaware of it until about  
14                  three weeks ago – is that the Prattipatis are not the *only* plaintiffs in the state court action, and that  
15                  the state court action is not *only* a wrongful death suit. Jane Doe II, the sister of the deceased  
16                  Prattipati daughter, is herself a plaintiff in that case. She is seeking to recover damages for  
17                  emotional distress, for the lingering impact on her life of the November 1999 incident in which  
18                  her sister died, and for the impairment to her life-time earnings potential. While the triggering  
19                  event for her injury claims is different in the two cases – the alleged sexual abuse and forced  
20                  labor in this case and the carbon monoxide event in the state court action – the injuries being  
21                  claimed are the same ones.

22                  Defendants now seek leave to amend their answers to plead the affirmative defense that  
23                  Jane Doe II's claims are barred by the pending state court action (filed two years before this  
24                  action), since it asserts claims for the same relief being sought in this action. To allow both  
25                  actions to proceed would permit a double recovery in violation of, among other things,  
26                  defendants' rights to due process of law.<sup>1</sup> The Court should grant defendants' request because

27                  

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<sup>1</sup> This motion just seeks leave to amend defendants' answers. On the assumption that leave will  
28                  be granted, defendants will shortly file a motion to stay or dismiss this action, as to Jane Doe II.

1 this motion has been made in a timely manner (following the discovery of previously unknown  
 2 facts), will not prejudice plaintiffs, and is most certainly not futile.

3 **STATEMENT OF FACTS**

4 On February 11, 2004, defendants' attorneys learned that Jane Doe II was a plaintiff in an  
 5 earlier-filed action in state court involving some of the defendants in this action. Bass Decl. ¶ 3.  
 6 Plaintiffs Jarmani and Lakshmi Pratipati and "Jane Roe I"<sup>2</sup> filed a Complaint against defendants  
 7 L.B. Reddy Estate Co. and Lakireddy Bali Reddy in Alameda Superior Court (the "Wrongful  
 8 Death Action") more than three years ago, on November 27, 2000. Bass Decl. Exh B. The same  
 9 plaintiffs, represented by the same counsel, filed this action two years later, on October 23, 2002.

10 Despite their obligation to do so, plaintiffs failed to notify either the Court or defendants  
 11 of the Alameda state court action via a Notice of Pendency of Other Action or Proceeding  
 12 pursuant to Local Rule 3.13(a).<sup>3</sup> Plaintiffs did acknowledge at the hearing on their motion for  
 13 class certification, and in subsequent briefing, that a separate wrongful death action by Lakshmi  
 14 and Jarmani Pratipati was pending in state court. They did not advise the Court that Jane Doe II  
 15 was herself a plaintiff in that action.<sup>4</sup> Bass Decl. ¶ 8; Exh. E.

16 Jane Doe II's allegations in the state court action are indistinguishable, in terms of her  
 17 claimed injuries, from those in this action. They also mirror some of the same theories of duty  
 18 and liability. In the state court action, she asserts a negligence cause of action, alleging that  
 19 defendant "Lakireddy Bali Reddy had custody and de facto guardianship" of her and "a duty to

20 <sup>2</sup> Jane Roe I in the state court action is Jane Doe II in this case.

21 <sup>3</sup> On November 26, 2002, plaintiffs joined in the Notice of Related Case filed by defendants.  
 22 Plaintiffs' joinder mentions only the criminal action that was pending at the time of the filing.  
 Bass Decl. ¶ 2; Exh. A.

23 <sup>4</sup> In footnote 2 of plaintiffs' Supplemental Memorandum of Points and Authorities in Support of  
 24 Plaintiffs' Motion for Class Certification, plaintiffs explain that "[a] separate claim for the  
 25 wrongful death of Jyotsna Devi Pratipati was filed in state court." Bass Decl. ¶ 8, Exh. E at  
 26 4:26-28. Nowhere do plaintiffs mention that Jane Doe II is a plaintiff in the state court action.  
 27 Plaintiffs do note, however, that a written agreement was entered into by the parties "in which  
 28 defendants waive any defense based on the filing of the wrongful death and survivorship claims  
 as separate actions." *Id.* In researching this motion, defendants located the referenced  
 "agreement." Bass Decl. ¶ F. We do not believe that it bars the present motion. The text of the  
 alleged waiver agreement is vague as to the parties and claims to which it applies. Moreover, the  
 waiver certainly does not contemplate that any plaintiff would be seeking a double recovery for a  
 single claim.

1 provide for her care and protection," and that he breached that duty, thereby causing "injury to her  
 2 body, and shock and injury to her nervous system, all of which have caused her great mental,  
 3 physical, and nervous pain and suffering." Bass Decl. Exh B at ¶¶ 13 and 15. In this action, she  
 4 asserts claims for negligence and for negligent infliction of emotional distress. Second Amended  
 5 Complaint at ¶¶ 224-227 and 293-296. She alleges that defendants owed her a "duty of care"  
 6 because of their status as her "guardians" and because they held "themselves out to the general  
 7 public as being plaintiffs family members, care givers, and protectors." She alleges that they  
 8 breached their duties of care, causing her to suffer "mental anguish, and severe physical and  
 9 emotional distress." Second Amended Complaint at ¶ 227.

#### ARGUMENT

10 Rule 15(a) of the Federal Rules of Procedure permits a party to amend a pleading by leave  
 11 of court. Leave "shall be freely given when justice so requires." Courts liberally grant leave to  
 12 amend a pleading. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also DCD Programs, Ltd. v.*  
 13 *Leighton*, 833 F.2d 183, 186 (9th Cir. 1987). In fact, "[t]he party opposing the motion for leave to  
 14 amend bears the burden of demonstrating a substantial reason exists to deny leave to amend."  
 15 *State of California v. Mueller*, 175 F.R.D. 631, 637 (N.D. Cal. 1997).

16 The key factors in ruling on a motion for leave to amend are: prejudice to the opposing  
 17 party, bad faith by the moving party, whether the amendment would be futile, and undue delay.  
 18 *Foman*, 371 U.S. at 182 ("[i]n the absence of any apparent or declared reason - such as undue  
 19 delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies  
 20 by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance  
 21 of the amendment, futility of amendment, etc."); *DCD Programs*, 833 F.2d at 186. Prejudice is  
 22 the most important factor; absent a showing of prejudice to the party opposing amendment, leave  
 23 to amend should be granted. *See United States v. Pend Oreille Public Utility Dist.*, 926 F.2d  
 24 1502, 1511 (9th Cir. 1991).

25 Defendants have not been guilty of any delay, and the proposed amendment is not  
 26 prejudicial or futile. Indeed, while this issue is being raised close to trial, the only prejudice is to  
 27 defendants themselves, and the fault for the delay lies with plaintiffs.

1           **A.     This Motion Is Made Following Discovery Of Facts That Plaintiffs Had A**  
 2           **Duty, But Failed, To Disclose**

3           Defendants were not previously aware of Jane Doe II's state court action. Plaintiffs failed  
 4           to identify the Wrongful Death Action at the outset of this case, despite their duty to do so:

5           Whenever a party knows or learns that an action filed or removed to this  
 6           district involves or a material part of the same subject matter and all or  
 7           substantially all of the same parties as another action which is pending in any  
 8           other federal or state court, the party *must promptly* file with the Court in the  
 9           action pending before this Court and serve all opposing parties in the action  
 10          pending before this Court with a Notice of Pendency of Other Action or  
 11          Proceeding.

12          (N.D. Local Rule 3-13(a) (emphasis added).)

13          Despite their knowledge that the pending Wrongful Death Action involved some of the  
 14          same parties and claims as this action, plaintiffs have never complied with this rule and, in fact,  
 15          appear to have concealed from the Court the nature of the Wrongful Death Action in response to  
 16          the Court's direct inquiry. If there has been any delay in pleading this affirmative defense, it is  
 17          the consequence of plaintiffs' concealment and failure to comply with the Local Rules.

18           **B.     Plaintiffs Will Not Be Prejudiced by the Proposed Amendment They Would**  
 19           **Unfairly Benefit If Defendants Were Denied Leave To Amend**

20          The proposed amended answers will not unfairly prejudice plaintiffs. Indeed, it will not  
 21          prejudice them at all. First, of course, the only plaintiff affected is Jane Doe II. She and her  
 22          counsel made the tactical decision – inexplicable, but tactical nonetheless – to file two actions  
 23          claiming the same injuries and to conceal the situation from this Court. She is not entitled to  
 24          pursue both actions, and she has acquired no vested or prescriptive right to do so by her almost  
 25          successful ploy. Defendants, on the other hand, will be obviously prejudiced if they are not  
 26          granted leave to amend. If defendants do not allege this critical affirmative defense before trial,  
 27          they may be deemed to have waived it.

28           **C.     The Proposed Amendment Is Not Futile**

29          This amendment is not futile. Both defendants and the Court have an interest in  
 30          addressing the implications of Jane Doe II's duplicative litigation. It would be an obvious  
 31          injustice if Jane Doe II were allowed to recover damages for the *same* injuries based on the *same*  
 32          duty in two different courts. Defendants should be granted leave to amend their answers to assert

1 the affirmative defense that Jane Doe II's claims are barred, in whole or in part, by her pending  
2 claim in state court.

3       The interests of justice dictate that a plaintiff cannot split her claim or demand and  
4 prosecute it in piecemeal fashion in separate suits. A court "may choose not to exercise its  
5 jurisdiction when another court having jurisdiction over the same matter has entertained it and  
6 can achieve the same result." *Crawford v. Bell*, 599 F.2d 890, 893 (9th Cir. 1979) (affirming  
7 dismissal of portions of a complaint which duplicate the allegations and prayer for relief in  
8 another action). In making a determination to dismiss (or stay a claim), courts consider the  
9 desirability of avoiding piecemeal litigation, the order in which the forums obtained jurisdiction,  
10 whether state or federal law controls, and whether the state proceeding is adequate to protect the  
11 parties' rights. *See Nakash v. Marciano*, 882 F.2d 1411, 1415 (9th Cir. 1989) (affirming district  
12 court's decision to stay action for RICO offenses, breach of contract and breach of fiduciary duty  
13 when plaintiff filed earlier state court claim involving similar parties and claims).

14       These factors *all* weigh in defendants' favor with respect to a stay or dismissal of Jane  
15 Doe II's claims in this action. The state court action is adequate to protect her rights. Jane Doe  
16 II's claims are almost all grounded in state law – she has already offered to dismiss her Alien Tort  
17 Claims Act claim, and her RICO claims are insubstantial at best – and she filed her state court  
18 action almost two years before this one.

19       Multiple litigation imposes additional burden and expense on the parties and the courts,  
20 and it carries with it the risk of inconsistent or duplicative outcomes. *See Colorado River Water*  
21 *Conservation District v. United States*, 424 U.S. 800 (1976); see also *Crawford*, 599 F.2d at 893  
22 ("increasing calendar congestion in the federal courts makes it imperative to avoid concurrent  
23 litigation in more than one forum"). In evaluating the existence of similar claims in two separate  
24 forums, courts need not find "exact parallelism," only that the claims are "substantially similar."  
25 *Nakash*, 882 F.2d at 1416.

## **CONCLUSION**

All the relevant factors weigh in favor of granting leave to amend. Jane Doe II cannot demonstrate any prejudice associated with the amendment, and she would be estopped by her own conduct from asserting prejudice even if there were some. The amendment is not futile. It is necessary to prevent an obvious injustice.

Dated: March 2, 2004

## BISHOP, BARRY, HOWE, HANEY & RYDER

COBLENTZ, PATCH, DUFFY & BASS, LLP

By: \_\_\_\_\_ /s/  
JONATHAN R. BASS  
Attorneys for Defendant  
PRASAD LAKIREDDY